

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS BRANDON HAHN,

Defendant-Appellant.

UNPUBLISHED
February 11, 2021

No. 352248
Clinton Circuit Court
LC No. 2019-010327-FH

Before: BOONSTRA, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

Defendant appeals by leave granted¹ after pleading *nolo contendere* to two counts of operating while intoxicated causing death (OWICD), MCL 257.625(4)(a), and one count of operating while intoxicated causing serious injury (OWICSI), MCL 257.625(5)(a). The trial court sentenced defendant to consecutive prison terms of 10 to 15 years for each of his OWICD convictions and to a concurrent term of three to five years for his OWICSI conviction. On appeal, defendant challenges only the trial court's imposition of out-of-guidelines sentences for his OWICD convictions.² We remand for the trial court to either more fully articulate reasons to support the sentences imposed or for resentencing.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

In March 2019, defendant was driving westbound on I-96 when he lost control of his vehicle and crossed onto eastbound I-96, striking another vehicle. The driver of the other vehicle was seriously injured, and the driver's wife and three-year-old son were killed. Defendant's post-

¹ *People v Hahn*, unpublished order of the Court of Appeals, entered March 10, 2020 (Docket No. 352248).

² Defendant specifically states in his appellate brief that he did not challenge the trial court's imposition of consecutive sentences in the trial court and that he is not doing so on appeal.

crash blood test revealed a blood alcohol content of 0.139 grams per 100 milliliters of blood.³ Defendant pleaded *nolo contendere* as described. At sentencing, defendant's recommended minimum sentence range under the sentencing guidelines was calculated at 43 to 86 months for the OWICD convictions. The Michigan Department of Corrections recommended consecutive within-guidelines sentences of 57 months for the OWICD convictions. The trial court imposed consecutive out-of-guidelines sentences of 10 to 15 years (120 to 180 months), as described, stating in relevant part:

People sometimes wonder what I do up where [sic] while I'm listening, and candidly, while I review things ahead of time, there are things I hear in the courtroom that prompt me to reflect and to want to reach out to a resource. So of course, one of the resources I looked to today is Mothers Against Drunk Driving, and some statistics on their cover page include that drunk driving costs each American \$500.00 a year, that drunk driving is one percent [sic] a preventable crime. Every 50 minutes, a drunk driver ends a life, and that every day 29 people are killed by drunk drivers. I've also looked at a couple of other things, because again, I—I started my commentary to—to [defendant] and to the family here, who is grieving beyond belief. But I said that we are a system of laws, and that my duty is—is to uphold the law, the [sic] follow the law, and not to make new law. But it's very troublesome to the Court, quite honestly, it's very troublesome when I can search and see that there's a crime of forgery of a document affecting real property, where you forge something with the intent to defraud someone, and the law says you can get up to 15 years in prison for that. I'm—I'm finding it very difficult to reconcile that with the circumstances here, where killing someone as a drunk driver, the maximum you can serve is 14 year [sic] per offense.

When [a member of the victim's family] was talking, he said you have stolen his entire life, and he said I was robbed. Interestingly, if you rob someone, you can spend up to life in prison. It is a life offense if you rob someone with a weapon, regardless of whether any injury occurs. That is confusing and makes no sense to me, and I know it makes no sense to these grieving members of the family. But it isn't for me to change the laws, it's for me to impose a sentence that is just and fair and based upon the circumstances. Not too long ago, it would have been required, prior to the Court's decision in *People versus Lockridge*, for me to impose a sentence within the guidelines range, and we've had discussion and come to a guidelines range here for the lives that you snuffed out, of 43 to 86 on the minimum. But after *People versus Lockridge*, the Court is no longer bound to impose a sentence within guidelines, but under *People versus Steanhouse*, the Court must follow principles of proportionality, taking into account the nature of the offense, the background of the offender, and concluding that a sentence imposed must be

³ MCL 257.625(1) currently defines "operating while intoxicated" to include a defendant operating a motor vehicle while possessing "an alcohol content of .08 grams or more per 100 milliliters of blood." See MCL 257.625(1)(b). On October 1, 2021, the blood alcohol content requirement will rise to .10 grams or more per 100 milliliters of blood. *Id.*

proportionate to the seriousness of the circumstances surrounding the offense and the offender. Sentencings guide—sentencing guidelines represent a best barometer, but they do not require the Court to impose a sentence within guidelines, and in fact departures are appropriate where the guidelines do not adequately account for the important factors legitimately considered at sentencing, where the—the recommended range is disproportionate either in direction—in either direction to the seriousness of the crime.

All of that being said, I would note the following, that at the time [defendant] was asked about the incident, he advised that he had a prior drunk driving arrest in Illinois, he had advised that he had a history with alcohol, he advised that as it related to this horrific tragedy, he did not believe he was impaired in any way as he went out to pick up his children. However, he advised that he had been drinking the day before, that he had drunk a fifth of vodka, and possibly a smaller bottle of vodka, which he believed to be a pint, and mixed it with orange juice. He believed he finished the fifth and he was pretty sick. He advised that he usually drinks a third or a quarter of the amount that he drank prior to the incident, and that he would feel terrible and take a day or two to recuperate after drinking the lesser amount. He advised that he drank because he—his wife had cancer and that he was struggling with the death of his father.

I suppose a mitigating factor here today is that [defendant] has stood up, looked at the family and has apologized, but I cannot also impose a sentence without commenting—you failed to look at the pictures of [the child victim] as his grandmother displayed them, you held your head down while each one of the victim’s spoke. And so it calls into the Court’s question in my mind what your remorse truly is, the level. But regardless, there are other factors that the Court must take into consideration when announcing a sentence, and those include public safety, deterrent effect, rehabilitation, and then of course penalty.

And all of that being said, Mr. Hahn, it is the Court’s sentence here today, I’m going to deviate upwardly and give you the maximum sentence on each of the two counts—causing death, for the reasons that I have indicated here today.

II. STANDARD OF REVIEW

We review a sentence that departs from the sentencing guidelines range for reasonableness. *People v Lockridge*, 498 Mich 358, 365; 870 NW2d 502 (2015). “[T]he standard of review to be applied by appellate courts reviewing a sentence for reasonableness on appeal is abuse of discretion.” *People v Steanhouse*, 500 Mich 453, 471; 902 NW2d 327 (2017). A trial court abuses its discretion in sentencing “when its decision falls outside the range of reasonable and principled outcomes.” *People v Foster*, 319 Mich App 365, 375; 901 NW2d 127 (2017).

III. ANALYSIS

Defendant argues that the trial court did not articulate sufficient reasons to justify the particular out-of-guidelines sentences imposed. We agree.⁴ In light of the trial court's lack of clarity regarding the basis for the sentences imposed, the fact that the trial court imposed the maximum minimum sentences permitted, see *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972), and, although defendant does not specifically challenge the trial court's decision in that regard, the fact that the sentences are consecutive, we conclude that remand is required for the trial court to either articulate more specific reasons for the imposition of these sentences or to resentence defendant.

A sentence is reasonable "if it adheres to the principle of proportionality" provided in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). *People v Walden*, 319 Mich App 344, 351; 901 NW2d 142 (2017). The principle of proportionality requires a sentence "to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Milbourn*, 435 Mich at 636. Although the sentencing guidelines are now advisory,⁵ they still serve as a "useful tool" or as "guideposts" to help reduce disparity in sentencing. *People v Dixon-Bey*, 321 Mich App 490, 524-525; 909 NW2d 458 (2017). A trial court may impose an out-of-guidelines sentence when it determines that "the recommended range under the guidelines is disproportionate, in either direction, to the seriousness of the crime." *Milbourn*, 435 Mich at 657. When determining proportionality, a trial court may consider factors that include but are not limited to:

(1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation. [*Walden*, 319 Mich App at 352-353 (quotation marks and citations omitted).]

"A trial court must articulate its reasons for imposing a sentence on the record at the time of sentencing." *People v Conley*, 270 Mich App 301, 312; 715 NW2d 377, 385 (2006). When a trial court justifies an out-of-guidelines sentence, it must include "an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *Dixon-Bey*, 321 Mich App at 525 (quotation marks and citations omitted). If it is unclear why a trial court imposed the sentence it did, "an appellate court cannot substitute its own judgment about why the [out-of-guidelines sentence] was justified." *People v Smith*, 482 Mich 292, 304; 754 NW2d 284 (2008).

⁴ We note that the prosecution does not argue that the trial court adequately articulated the reasons for its out-of-guidelines sentences, but instead merely (and cursorily) argues that "[g]iven the seriousness of the crimes and destruction is [sic] caused, we feel the sentence was reasonable, proportionate, and justified."

⁵ See *Lockridge*, 498 Mich at 391.

We conclude that the trial court did not sufficiently articulate its reasons for imposing the two challenged sentences. A trial court’s justification for an out-of-guidelines sentence “must be sufficient to allow for effective appellate review.” *Smith*, 482 Mich 292 at 304 (quotation marks and citation omitted). The trial court stated only that it was imposing an out-of-guidelines sentence “for the reasons that I have indicated here today.” The trial court’s reference to “reasons I have indicated here today” did not identify which of its comments about the case were reasons for exceeding the guidelines. The trial court offered various comments about the punishments generally available for these crimes versus those for other crimes, statistics about the costs that drunk driving imposes on society, and other matters not specific to this defendant or these offenses. The trial court explicitly mentioned defendant’s sentence only when it questioned the level of defendant’s remorse:

I suppose a mitigating factor here today is that Mr. Hahn has stood up, looked at the family and has apologized, but I cannot also impose a sentence without commenting—you failed to look at the pictures of [the three-year-old victim] as his grandmother displayed them, you held your head down while each one of the [victims] spoke. And so it calls into the Court’s question in my mind what your remorse truly is, the level. But regardless, there are other factors that the Court must take into consideration when announcing a sentence, and those include public safety, deterrent effect, rehabilitation, and then of course penalty.

Even in those statements, it is unclear how defendant’s level of remorse was connected to the court’s sentencing decision. We are unable to clearly identify the trial court’s reasons for imposing the particular (and *Tanner* maximum) sentences it imposed, and how those reasons were connected with the sentencing guidelines range applicable to defendant’s convictions. The trial court’s statements were not sufficient to allow effective appellate review because it is unclear which of the trial court’s statements supported its sentencing decision, *Smith*, 482 Mich 292 at 304, or, therefore, how they might affect our reasonableness assessment. Accordingly, we conclude that the trial court abused its discretion in the imposition of these out-of-guidelines sentences without sufficient articulation of its reasoning. *Steanhouse*, 500 Mich at 471.

For these reasons, we remand for either additional articulation or resentencing. Should the trial court chose to articulate additional reasons for the sentences imposed, or in resentencing impose a different out-of-guidelines sentence, it should bear in mind that the extent to which a sentence exceeds the sentencing guidelines range must also be justified. *Dixon-Bey*, 321 Mich App at 525; *Smith*, 482 Mich at 304.

Remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Stephen L. Borrello
/s/ Brock A. Swartzle